UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBBY YEGER,

Plaintiff,

-against-

THE INSTITUTE OF CULINARY EDUCATION, INC.,

Defendant.

1:14-CV-8202 (LTS)

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AFFIDAVIT OF SCOTT T. BAKEN, ESQ. IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

SCOTT T. BAKEN, being duly sworn, deposes and says:

1. I am a Shareholder with the law firm of Jackson Lewis P.C., attorneys of record for Defendant The Institute of Culinary Education in the above-captioned action (named in this litigation as "The Institute of Culinary Education, Inc." and referred to herein as "Defendant" or "ICE"). As such, I am familiar with the documents attached hereto and the information recited in Paragraphs 53 through 58 below.

2. I respectfully submit this affidavit in support Defendant's Rule 56(a) Motion for Summary Judgment seeking to dismiss Plaintiff Debby Yeger's First Amended Complaint in its entirety, with prejudice.

3. True and correct copies of the pages of Plaintiff's deposition transcript cited in Defendant's Local Rule 56.1 Statement of Material Facts Not In Dispute In Support Of

Defendant's Motion For Summary Judgment ("Statement Of Undisputed Material Facts") are attached hereto as Exhibit "1."

4. A true and correct copy of Defendant's January 30, 2008 offer letter to Plaintiff is attached hereto as Exhibit "2."

5. True and correct copies of the pages of Brian Aronowitz's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "3."

6. True and correct copies of the pages of Matthew Petersen's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "4."

7. A true and correct copy of Defendant's January 2009 ICE Employee Handbook is attached hereto as Exhibit "5."

8. A true and correct copy of an Employee Change Form relating to Plaintiff is attached hereto as Exhibit "6."

9. A true and correct copy of an Administrative Organization & Office Management chart is attached hereto as Exhibit "7."

10. True and correct copies of the cover letter and resume Plaintiff submitted to Defendant are attached hereto as Exhibit "8."

11. A true and correct copy of Plaintiff's 2009 Annual Performance Review is attached hereto as Exhibit "9."

12. True and correct copies of email correspondence and documents regarding Plaintiff's physical therapy treatment are attached hereto as Exhibit "10."

13. True and correct copies of the pages of Antonia Abreu's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "11."

14. True and correct copies of emails exchanged between Plaintiff and Brian Aronowitz in May 2011 are attached hereto as Exhibit "12."

15. A true and correct copy of Brian Aronowitz's October 4, 2011 email to Matthew Petersen attaching a draft of a Business Procurement Situation Analysis is attached hereto as Exhibit "13."

16. True and correct copies of emails exchanged between Brian Aronowitz and Rick Smilow in October 2011 are attached hereto as Exhibit "14."

17. True and correct copies of emails exchanged between Plaintiff and Brian Aronowitz on January 3, 2012 are attached hereto as Ex. "15."

18. True and correct copies of various emails regarding the creation of Defendant's redefined Director of Financial Aid position and the Division of Responsibilities between the redefined Director of Financial Aid position and Defendant's Director of Compliance & Reporting position are attached hereto as Ex. "16."

19. A true and correct copy of Plaintiff's 2011 Performance Management Cycle Year End Assessment & Evaluation is attached hereto as Ex. "17."

20. True and correct copies of the pages of Vincent Tunstall's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "18."

21. A true and correct copy of Defendant's April 30, 2012 offer letter to Vincent Tunstall is attached hereto as Exhibit "19."

22. True and correct copies of emails exchanged between Brian Aronowitz and other ICE officials which include a copy of the resume Defendant received for Vincent Tunstall are attached hereto as Exhibit "20."

23. A true and correct copy of Defendant's January 6, 2012 advertisement for a Director of Financial Aid is attached hereto as Exhibit "21."

24. A true and correct copy of a February 1, 2012 Annual Notice of Pay Rate and Pay Date regarding Plaintiff is attached hereto as Exhibit "22."

25. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in October 2012 are attached hereto as Exhibit "23."

26. True and correct copies of emails exchanged between Plaintiff, Matthew Petersen and Vincent Tunstall in October 2012 are attached hereto as Exhibit "24."

27. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in October 2012 through December 2012 are attached hereto as Exhibit "25."

28. True and correct copies of an estimated breakdown of the average amount of time it took Plaintiff to review a student's file for Title IV compliance purposes that Plaintiff provided to Matthew Petersen, and related documents, are attached hereto as Exhibit "26."

29. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in November 2012 and December 2012 are attached hereto as Exhibit "27."

30. True and correct copies of emails exchanged between Plaintiff, Matthew Petersen and Antonia Abreu in December 2012 are attached hereto as Exhibit "28."

31. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in December 2012, and a draft email, are attached hereto as Exhibit "29."

32. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in December 2012 and January 2013 are attached hereto as Exhibit "30."

33. A true and correct copy of salary information Plaintiff presented to Matthew Petersen during their first meeting on the topic of salary in October 2012 is attached hereto as Exhibit "31."

34. A true and correct copy of the 2012 Performance Management Cycle Year End Assessment & Evaluation Self-Assessment Plaintiff provided to Matthew Petersen is attached hereto as Exhibit "32."

35. True and correct copies of Plaintiff's 2012 Performance Management Cycle Year End Assessment & Evaluation and Plaintiff's January 22, 2013 addendum to the evaluation are attached hereto as Exhibit "33."

36. A true and correct copy of Plaintiff's January 8, 2013 Performance Improvement Plain is attached hereto as Exhibit "34."

37. True and correct copies of emails exchanged between Plaintiff and Matthew Petersen in February 2013 are attached hereto as Exhibit "35."

38. A true and correct copy of James. W. Halter, Esq.'s February 26, 2013 letter to Defendant is attached hereto as Exhibit "36."

39. True and correct copies of the pages of Mary Anne Kennedy's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "37."

40. A true and correct copy of Joseph J. Lynett, Esq.'s March 14, 2013 letter to James W. Halter, Esq. is attached hereto as Exhibit "38."

41. A true and correct copy of James. W. Halter, Esq.'s July 3, 2013 letter to Joseph J. Lynett, Esq. is attached hereto as Exhibit "39."

42. True and correct copies of the notes Mary Anne Kennedy prepared regarding her July 22, 2013 meeting with Plaintiff are attached hereto as Exhibit "40."

43. True and correct copies of the notes Mary Anne Kennedy prepared regarding her July 2013 investigation of complaints that Plaintiff was refusing to meet with students are attached hereto as Exhibit "41."

44. True and correct copies of the pages of Martha Padilla Mercedes' deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "42."

45. True and correct copies of emails exchanged between Plaintiff and Martha Padilla Mercedes in August 2013 regarding Plaintiff's use of paid time off are attached hereto as Exhibit "43."

46. A true and correct copy of an October 30, 2013 email from Mary Anne Kennedy to Matthew Petersen attaching Notes To File regarding an October 15, 2013 meeting with Plaintiff is attached hereto as Exhibit "44."

47. A true and correct copy of the Charge of alleged discrimination Plaintiff submitted to the EEOC in or about October 2013 is attached hereto as Exhibit "45."

48. A true and correct copy of the Complaint Plaintiff filed against Defendant with the United States District Court for the Southern District of New York is attached hereto as Exhibit "46."

49. A true and correct copy of the First Amended Complaint Plaintiff filed against Defendant with the United States District Court for the Southern District of New York is attached hereto as Exhibit "47."

50. A true and correct copy of Defendant's Answer To Plaintiff's First Amended Complaint which Defendant filed with the United States District Court for the Southern District of New York is attached hereto as Exhibit "48."

51. True and correct copies of the pages of Dana Malach's deposition transcript cited in Defendant's Statement Of Undisputed Material Facts are attached hereto as Exhibit "49."

52. True and correct copies of the cases cited in Defendant's Memorandum Of Law In Support Of Defendant's Motion For Summary Judgment which are published on LEXIS are attached hereto as Exhibit "50."

53. On or about May 22, 2015, Plaintiff filed a motion for leave to file a Second Amended Complaint.

54. Defendant opposed this motion, and the parties' motion papers were fully submitted to the Court as of June 15, 2015.

55. On October 22, 2015, defense counsel emailed a letter to Plaintiff's counsel advising Plaintiff's counsel of Defendant's intent to move for summary judgment seeking the dismissal of Plaintiff's First Amended Complaint in its entirety and requesting Plaintiff to voluntarily withdraw her First Amended Complaint.

56. On October 30, 2015, Plaintiff's counsel emailed a letter to defense counsel advising defense counsel that Plaintiff declined to voluntarily withdraw her First Amended Complaint.

57. On October 29, 2015 and November 3, 2015, counsel for the parties participated in two telephone conversations to discuss Defendant's proposed summary judgment motion.

58. Based on counsel for the parties' exchange of written letters on October 22, 2015 and October 30, 2015, and telephone conversations on October 29, 2015 and November 3, 2015, I hereby certify that the parties have complied with their consultation obligations under Paragraph A(2)(b) of Judge Laura Taylor Swain's Individual Practice Rules.

Scott T. Baken

Sworn to and subscribed before me this 4th day of November, 2015.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBBY YEGER,

Plaintiff,

-against-

THE INSTITUTE OF CULINARY EDUCATION, INC.,

Defendant.

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2015, a true and correct copy of the foregoing Affidavit of Scott T. Baken, Esq. In Support Of Defendant's Motion For Summary Judgment has been served via ECF and FedEx overnight mail on Plaintiff's counsel of record at the address set forth below:

James W. Halter, Esq.
LIDDLE & ROBINSON, L.L.P.
800 Third Avenue, 8th Floor
New York, New York 10022
Attorneys for Plaintiff

Lauren Hanson